

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees' Association of New Hampshire, Inc.	:	
	:	
	:	
	:	
	:	Case No. S-0309:1
v.	:	<u>S-0312:1</u>
	:	
Plymouth State College and Keene State College, University System of New Hampshire	:	Decision <u>780008</u>
	:	
	:	
	:	

Appearances

Representing the State Employees' Association of New Hampshire, Inc.:

Howard Zibel, Esquire, Counsel
 Richard Molan, Assistant Executive Director
 Mary Gempka, President, Plymouth SEA
 Doris Damiano, President, Keene SEA

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esquire, Counsel
 Gary Wulf, System Personnel Director
 Melinda Regnelle, LTA III

BACKGROUND AND FINDINGS OF FACT

The SEA is the certified bargaining representative of non-academic staff employees at Keene State College and Plymouth State College. Collective bargaining agreements are in effect between the SEA and both colleges. These agreements are substantially similar. Each contains reference to and incorporates within its processes the "System Personnel Policies Council (Operating Staff)" in language as follows (Article V (PSC); Article V (KSC):

"5.1 The parties recognize their mutual obligation to conscientiously seek satisfactory solutions to problems arising out of the employment relationship. The parties acknowledging that communication and consultation will help fulfill this obligation further agree that:

- a) The President of Chapter of the Association shall be a member of the System Personnel Policies Council (Operating Staff). . ."

Following the enactment of a pay raise by the Legislature in its 1977 session which was publicized as a seven per cent raise, employees became confused since they did not get seven per cent raises because the money received by the University System was not to be distributed across the board but through a merit system. At the October, 1977 meeting of the System Personnel Policies Council, SEA representatives expressed concern about this confusion and it was agreed that a "Task Force" would be established for each campus to explain the calculation of pay. Task Force membership was to include members of the bargaining unit as well as administration representatives. Suggestions of members were not solicited from the SEA campus presidents. Instead, System Personnel Director Gary Wulf received suggested names from campus personnel officers. At both Keene and Plymouth the bargaining unit members selected for Task Force membership were not SEA members.

The selected members were invited to the University System personnel offices during working time to be briefed on the material to be covered by the Task Force.

When they discovered the membership of the Task Forces, both SEA campus presidents questioned the makeup of the Task Forces and the selection process for bargaining unit representatives. At the December 1 meeting of the Council, System Personnel Director Wulf indicated those selected for the Task Forces would have to "advocate" the merit system and both SEA presidents received the impression that this was why SEA members had not been selected. After inquiring, SEA members were allowed to volunteer as Task Force members.

At meetings of the Task Forces, members attempted to explain and defend the merit system and observers received the impression that Task Force members were in favor of the existing pay and benefits system.

At all times relevant to this decision an agreement was in effect between the parties concerning the pay system. SEA and College officials were conducting negotiations during this period on the next (post August, 1979) contract and the SEA was seeking alternatives to the merit system. Mr. Wulf testified he favored the merit system, as did the University System Board of Trustees.

There is no dispute that the Colleges did not post the complaints in these matters or the notices of hearings before the PELRB.

The SEA has protested the actions of the Colleges in selection and training of members for the Task Forces without consultation with the SEA and Task Force actions of communicating with bargaining unit employees as violations of RSA 273-A:5 I (a), (b) and (e) in that the conduct interferes with employees' rights granted by statute, interferes with administration of the employee organization, and is a failure to negotiate in good faith. Additionally, the SEA charges the failure to post notices and complaints violates Board rules 4.1 (b) and 5.2. A hearing was held by the Board at its offices in Concord on February 15, 1978.

RULINGS OF LAW

First, as to posting complaints and notices of hearings, the Board notes its rules are clear and binding in this case on both Keene and Plymouth State Colleges. Admittedly, the rules were intentionally disregarded by the Colleges. The reasons for the rules governing posting Board notices and charges are clear. Employees have a right to know what charges are brought by and

against their employees and representatives and when and where hearings on those charges are to be conducted. No employer can decide whether to post notices based on its opinion of the charges contained therein.

The SEA has not alleged or shown harm to its members resulting from the non-posting. The Colleges nevertheless have flagrantly violated Board rules.

Second on the basic charges, the Board finds that the Colleges acted improperly. The System Personnel Policies Council is institutionalized in the collective bargaining agreement as part of the working relationship of the parties. The SEA asked that the Council help explain the "seven per cent raise." Rather than consult the SEA on membership of Task Forces to which the SEA campus presidents agreed as a communication device, management sought other management officials' suggestions for proper members of the Task Forces. It is more than coincidence that no SEA members were selected when Mr. Wulf's statements about selecting "advocates" for the system to be explained are examined in light of the known position of SEA negotiators in negotiations for the next contract.

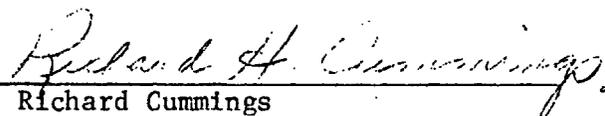
The propriety of management communication with bargaining unit employees is not examined here since it is not necessary to this decision to consider the degree or nature of such communications. Rather, this case presents the issue of the use by one party for its own purposes of an established Council which was both management and labor organization members and which has been written into the contract. The Board cannot say whether management intended for the Task Forces to present a biased picture of pay or merit plan issues. However, such a picture was the apparent result of its actions. Even had that not been the result, management's unilateral selection of Task Force members without consultation with SEA Council members was a failure to follow the contract's unspoken but inherent commands. When the parties included the Council in the contract, it was inherent that the Council became part of the labor relationship and was subject to the laws requiring bargaining in good faith between management and the SEA. Failure to consult over Task Force members was a failure to bargain and prohibited by RSA 273-A I (e).

There is no evidence that the employer's actions restrained, coerced or interfered with the employees' rights or sought to dominate or interfere with the formation or administration of the SEA and therefore the Board cannot find violations of RSA 273-A I (a) or (b) in this case.

ORDER

Keene State College and Plymouth State College are ordered to post all unfair labor practice complaints and notices of hearings in this and future or pending matters in compliance with PELRB rules immediately upon receipt of this Order and supply the Board with proof of compliance within five (5) days of receipt of this Order.

Further, Task Forces established by suggestion of or under the auspices of the System Personnel Policies Council (Operating Staff) shall include bargaining unit employees who are members of or agreeable to the SEA which shall be consulted concerning such membership and suggest bargaining unit members in the first instance. All present Task Forces, if any, shall be reconstituted to include such members in numbers at least equal to the number of management members.


Richard Cummings
Acting Chairman

Signed this 1st day of March, 1978

All concurred. Members Allman and Anderson also present. Chairman Haseltine absent. Member Moriarty took no part in the hearing or consideration of this decision. Board Clerk Evelyn LeBrun and Counsel Bradford Cook also present.